IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Service Tax Stay Petition No.75212 of 2022
&
Service Tax Appeal No.75485 of 2021
Cross Objection No.75253 of 2021

(Arising out of Order-in-Original No.09/ST/Ayukt/2020 dated 22.12.2020 passed by Commissioner of CGST & Excise, Patna I)

Commissioner of CGST & Excise, Patna I
1st Floor, C.R.Building (Annexe), B.C.Patel Path, Patna-800001

Appellant

VERSUS

M/s Broad Son Commodities Private Limited
Dr.Himanshu Complex, Block Road, Koilwar Chowk, Arrah, Bhojpur, Bihar

Respondent

APPERANCE :
Shri Manish Mohan, Authorized Representative for the Appellant
Shri Ankit Kanodia & Ms.Megha Agarwal, both Advocates for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

Miscellaneous No. 75060/2023
FINAL ORDER NO…75120/2023

DATE OF HEARING : 22 .02.2023
DATE OF PRONOUNCEMENT :28.02.2023

Per Ashok Jindal :

The Revenue is in appeal against the impugned order and moves an application for stay of impugned order. Respondent has also filed a Cross Objection to the appeal filed by the Revenue.

2. The facts of the case are that the Government of Bihar awarded to the respondent the right to use mining of minerals, oil or gas in respect of sand ghats of Patna, Bhojpur and Saran of the State of Bihar. The right to use of natural resources (Sand) was assigned for the period 2015 to 2019 on 29.12.2014. As per the settlement agreement, the amount have fixed for the year 2015 and 20% increase was fixed in respect of subsequent year 2016-2019. The fixed percentage of settlement

amount was so fixed must be remitted at the prescribed dates as mentioned below :

(1) First installment (50%) : by 15th December of the previous financial year. (i.e. for 2017, the 50% amount must be paid prior to 15th December, 2016)

(2) Second installment (25%) : 15th April of the relevant financial year.

(3) Third installment (25%) : 15th September of the relevant financial year.

The two installments of settlement amount of 2017, were payable on 15th December, 2016 and 15th April, 2017 i.e. after 2016. Therefore, the Revenue was of the view that the right to use the natural resources for the period 2017 were not assigned before 01.04.2016, therefore, sought to deny the benefit of Mega exemption Notification Sl.No.61 dated 13th April, 2016. Therefore, proceedings were initiated against the respondent by issuance of show-cause notice. The matter was adjudicated and the Adjudicating Authority held that as the right to use the impugned natural resources was assigned for the period 2015 to 2019 much before 1st April, 2016. The Mega exemption Notification Sl.No.61 dated 13th April, 2016 made applicable wherein if any right to use was assigned after First date of April, 2016 become taxable. The benefit of exemption Notification is available to the respondent if the said right to use would were assigned prior to 01.04.2016.

3. Aggrieved from the said order, Revenue is before us.

4. The Ld.Authorised Representative for the Revenue submits that in terms of Rule 7 of Taxation Rules, 2011, the terms for payment of service tax, the liability of the respondents for the settlement amount payable for the period from 01.01.2017 to 30.06.2017 were arisen on 06.01.2017. In that circumstances, the respondent is not entitled to claim the benefit of exemption Notification Sl.No.61 dated 13th April, 2016.

5. On the other hand, the Ld.Counsel for the respondent, reiterated the findings of the impugned order.

6. Heard the parties and considered the submissions and gone through the impugned Notification as well as impugned order noted

contents thereof. In the impugned order, the adjudicating authority has examined the issue in detail and observed as under :

(i) *" A tender-cum auction was organized on 21.10.2014 and finalized on 29.12.2014 for the unit no. one comprising all rivers passing through the districts of Bhojpur in the state of Bihar (refer copies of agreements enclosed as Annexure-B);*

(ii) *M/s BSCPL being highest bidder, have been awarded the said tender with an amount of Rs.71,52,67,930/- (Rupees seventy one crore fifty two lakh sixty seven thousand nine hundred thirty only)) was for right to mining of sand during the calendar year 2015 in the district of Bhojpur ; (Refer copies of agreements enclosed as Annexure-B);*

(iii) *Out of aforesaid amount, M/s BSCPL have deposited the required amount of 50% in respect of each districts, separately, against the amount finalized for the calendar year 2015; (Refer copies of agreements enclosed as Annexure –B);*

(iv) *The terms and conditions for the calendar years 2015 to 2019 were decided at once in course of finalization of the said tender cum auction dated 29.12.2014, but the quantum of 'Settlement Amount' was to be decided on annual basis, considering calendar year; (Refer copies of agreements and letters dated 29.12.2014 enclosed as Annexure-D);"*

7. We agree with the observations made by the adjudicating authority in the impugned order and have gone through Clause 61 of Mega exemption Notification Sl.No.61 dated 13th April, 2016, which is reproduced below :

> *"61. Services provide by Government or a local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Government or the local authority before the 1st April, 2016.*
>
> *Provided that the exemption shall apply only to service tax payable on one time charge payable, in full upfront or in*

> *installments, for assignment of right to use such natural resource."*

8. On examination of the said Notification, right to use assigned by the Government or the local authority before the 1st April, 2016, is entitled for exemption from payment of service tax. Admittedly in the instant case, the right to use of natural resources (Sand) were assigned on 29.12.2014, which has no concern with the terms of payment.

9. In that circumstances, we do not find any infirmity in the impugned order. Accordingly, the same is upheld.

9. In the result, the appeal filed by the Revenue stands dismissed. Stay Petition also stands dismissed.

10. Cross Objection filed by the respondent also gets disposed of.

(Pronounced in the open court on…28.02.2023.)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

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